

22 - 24 NOVEMBER 2017  
MUNICH

# GERMAN AND UPC PATENT INFRINGEMENT LITIGATION PROCEEDINGS

*Get an in-depth  
understanding of  
the German system  
and an introduction  
to the UPC!*

- Substantive law
- Strategic and prejudicial aspects
- Patent infringement litigation
- Comparison between the national and the future UPC system
- Update, discussion, networking

**Dr. Christof Augenstein**  
*Attorney, Partner,  
Kather-Augenstein Rechtsanwälte,  
Düsseldorf*

**Dr. Klaus Grabinski**  
*Judge, German  
Federal Court of Justice  
(Bundesgerichtshof),  
Karlsruhe, 10<sup>th</sup> Civil Division,*

**Gabriele Mohsler**  
*Vice President Patent  
Development at IPR & Licensing,  
Ericsson, Stockholm*

**Dr. Matthias Zigann**  
*Presiding Judge,  
Regional Court Munich I  
(Landgericht München I),  
7<sup>th</sup> Division*





*Get an in-depth understanding of the German patent infringement litigation system and an introduction to the future UPC system!*

**AIMS AND OBJECTIVES** The German patent infringement litigation system enjoys an outstanding reputation not only within the European patent community but also worldwide. Due to this reputation, many international patent infringement cases are litigated before German Patent Courts. Therefore it is not surprising that the creation of the Unified Patent Court (UPC) has been strongly influenced by the German patent litigation system and German experts.

This seminar will give any practitioner unfamiliar with the German patent infringement litigation system an in-depth understanding of its principles and structures. Experts from private practice and industry, as well as representatives from prestigious German patent courts will provide an insight into all aspects of patent infringement litigation from the preparation until the enforcement of the final decision. The participants will learn the principles of substantive patent infringement law. Moreover, they will gain insight into the strategic and prejudicial considerations of the parties involved in a patent infringement conflict. Our experts will grant a comprehensive and detailed presentation of the German litigation system, especially the bifurcated infringement and validity proceedings in Germany or differing regional customs before Germany's most frequented patent infringement courts.

The seminar will also present an introduction to the principles and procedures before the future Unified Patent Court (UPC) by comparing differences to the current German system in parallel, so that participants will also receive an overview how proceedings under the UPC will have to be prepared, litigated and enforced.

The participants will have the opportunity to raise questions and discuss their views with our renowned experts and with colleagues from different countries and industries worldwide.

## WHO SHOULD ATTEND?

- Members of Corporate Patent, IP and R&D departments
- Inhouse legal counsels
- Patent attorneys
- Professional representatives before the EPO
- IPR attorneys and external counsels

You will meet colleagues from different countries and will be able to network and profit from their experience and perspective.

## DAY 1: SUBSTANTIVE LAW

*(Dr. Christof Augenstein, Dr. Matthias Zigann)*

### Scope of protection of patents

Interpretation of Art. 69 EPC • Decisiveness of the claim wording • Feature Analysis

### Literal patent infringement

Definitions within the patent • Function-oriented interpretation • Basis for interpretation: Description, Drawings, and exceptionally prosecution history

### Equivalent infringement

Same effect • Obviousness • Equivalence in the stricter sense • Numerical specifications or measurements • "Formstein"-defence

### Contributory infringement

Conditions • Legal consequences

### Exhaustion

### Right of prior use

### Infringing activities

## DAY 2: STRATEGIC AND PREJUDICIAL ASPECTS

*(Dr. Christof Augenstein, Gabriele Mohsler)*

### Preparatory work of the plaintiff

Infringement analysis • Analysis of the validity • Identifying the proper litigation patents • Reasons for a warning letter • Dispensability of the warning letter • Unjustified warning letter • Warning letter/notice for production of Legitimacy claim • Typical content of a warning letter • Time limit • Contractual penalty

### Receipt of the warning letter/information at the defendant

Preparation of the defence • Protective letters • Potential reactions to a warning letter • Acceptance of claims • Reimbursement of costs • Request to postpone effect of injunction

### Plaintiff's reaction

Consequences of a cease-and-desist declaration • Contract for a contractual penalty

### Applicable law in international cases

### Necessity for pre-trial contacts before the UPC

### Gathering of evidence

### The "Düsseldorf Inspection Procedure"

Combination of expert opinion and order to tolerate inspection • Requirements for inspection order • Authorizations of the court expert • Course of the inspection • Countermeasures defendant • Proceedings for disclosure of expert opinion

### Gathering of evidence before the UPC

## DAY 3: PATENT INFRINGEMENT LITIGATION

(Dr. Christof Augenstein, Dr. Klaus Grabinski)

### International jurisdiction of German courts and the UPC

GAT/LuK, Solvay and “Torpedo”

### Competence of courts within Germany

Local and functional jurisdiction

### Competence of the UPC local/regional/central divisions

### Patent infringement proceedings before German courts

The customs before Germany’s most frequented courts

### Patent infringement proceedings before the UPC

Written/interim/oral procedure

### Claimant’s preparations

Motions and typical content of the complaint • Entitlement • Liability of defendant

### Remedies available

Injunction • Damages/Reimbursement • Information/Rendering Accounts • Recall/Destruction

### Preliminary injunctive relief

Proceedings, requirements and local differences before German courts • Proceedings and requirements before the UPC • Strategic considerations

### Defendant’s reactions and preparations

Security bond • Acknowledgement of Complaint • Acknowledgement of allegations according to Sec. 138 (3) ZPO • Third party notice and intervention

### Parallel pending opposition or nullity proceedings

Split infringement and validity proceedings • Nullity proceedings before the Federal Patent Court and appeal proceedings before the Federal Court of Justice • Stay of infringement proceedings

### After the Judgement

### Appeal Proceedings before German Courts and the UPC

### Enforcement of decisions from German Courts

Injunction • Information/Rendering accounts • Recall/Destruction • Damages/Reimbursement

### Enforcement of decision from the UPC

Jurisdiction – application of national law • Requirements for enforcement • Security for damages • Failure to comply with a court order

## YOUR EXPERTS

### Dr. Christof Augenstein

Attorney, Partner, Kather-Augenstein Rechtsanwälte, Düsseldorf



Dr. Augenstein has been a litigator for more than 10 years, particularly in extensive, technically complex patent infringement litigation. He is a member of various specialized committees, e.g. Co-Chair of the Standing Committee on Unitary Patent and a member of the Standing Committee on Enforcement Q 224 at the AIPPI.

### Dr. Klaus Grabinski

Judge, German Federal Court of Justice (Bundesgerichtshof), Karlsruhe



Dr. Grabinski has been assigned as a judge to the 10<sup>th</sup> Civil Division (X. Zivilsenats) which has, *inter alia*, jurisdiction on patent dispute matters. He is an author of commentaries and a multitude of articles concerning Patent Law and a member of Expert panels advising the UPC Preparatory Committee on different work streams. Other than that, Dr. Grabinski is a speaker at national and international conferences.

### Gabriele Mohsler

Vice President Patent Development at IPR & Licensing, Ericsson, Stockholm



Gabriele Mohsler is Head of Patent Development within Ericsson, responsible for all patent creation world-wide and in charge of a number of patent units worldwide. For a number of years she has been responsible for European litigation within Ericsson. In 1997, she started building up Ericsson’s patent department in Germany which is now one of the key IPR departments within Ericsson.

### Dr. Matthias Zigann

Presiding Judge, Regional Court Munich I (Landgericht München I)



Dr. Zigann has been presiding the 7<sup>th</sup> (patent) division since December 2012. Before his assignment, he had been delegated to serve as a research associate with the X<sup>th</sup> civil (patent) division of the German Federal Court of Justice in Karlsruhe for three years. He is a regular speaker at national and international IP events and author of IP related commentaries.

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## REGISTRATION FORM

### DATE

22 November 2017, 2 pm - 8 pm (Joint dinner at 8.30 pm)

23 November 2017, 9 am - 5 pm

24 November 2017, 9 am - 5 pm

Registration on the first day from 1.30 pm

### VENUE

Platzl Hotel München

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### ALTERNATIVE HOTEL ACCOMODATION

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A limited number of rooms have been reserved at the hotels and are subject to availability. All bookings should be made directly with the hotels quoting the seminar to obtain a discounted fee.

**SEMINAR CODE: 17 11 GP160 W**

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### FEE/DISCOUNT

€ 1.990,- (+ 19% VAT). The fee includes conference documentation, refreshments, a joint dinner on the evening of the first day and lunch on day two and three. A second participant and all further participants coming from the same company will receive a discount of 10%

### GENERAL TERMS AND CONDITIONS

Our general terms and conditions apply and are available on our homepage  
[www.akademie-heidelberg.de/unternehmen/agb](http://www.akademie-heidelberg.de/unternehmen/agb)

An English version is available upon request.

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## ANY QUESTIONS?



Don't hesitate to contact me. I am gladly at your disposal.

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